Commission of Inquiry
into
Residential Tenancies

Collective Bargaining for Tenants

Frank Reid

Research Study No. 2

COLLECTIVE BARGAINING FOR TENANTS

by

Frank Reid

Research Study No. 2

Commission of Inquiry

into Residential Tenancies

Toronto

Published by the Commission of Inquiry
into Residential Tenancies, September 1984

Printed in Canada

ISSN - 0823-4418
ISBN - 0-7743-9684-7

Copies of this report are available from
the Ontario Government Bookstore,
880 Bay Street,
Toronto, Ontario,
M7A 1N8.
Telephone: 416-965-6015; toll-free 1-800-268-7540;
area code 807, ask operator for Zenith 67200.

INTRODUCTION

The rental relationship between landlord and tenant and the employment relationship between employer and employee have many similarities as well as some important differences. Every Canadian province and the federal jurisdiction have established procedures to facilitate collective bargaining over the terms and conditions of the employment relationship. The purpose of this paper is to review the operation of the collective bargaining system in the employment sector and to assess its relevance for collective bargaining between landlords and tenants. The emphasis throughout the paper is on comparisons and contrasts between the two systems.

Tenant associations already exist in Ontario, and they make representations on behalf of tenants to the Residential

---

I am grateful for helpful comments from David Foot, Morley Gunderson, Jacquie Mancell, Tom Rankin, Wayne Roberts, John Todd, and two anonymous referees.

Tenancy Commission. Formalizing these relationships would be, in one sense, merely an outgrowth of activities that now takes place under the Residential Tenancies Act. The idea also has the potential, however, of evolving into a system of collective bargaining outside the scope of the Act. In that case, bargaining would probably involve both monetary and nonmonetary items, as it now does in the employment relationship.

In order to assess the applicability of collective bargaining to the rental relationship, one must first specify the objective of such a policy; this exercise is attempted in the first section below. Then the details of a potential procedure for certification of tenant bargaining units are discussed. Following is an assessment of the applicability to the rental relationship of various mechanisms for resolving bargaining disputes, including conciliation, mediation, arbitration and the strike. The final section presents the conclusions of the analysis.

POLICY OBJECTIVES OF COLLECTIVE BARGAINING FOR TENANTS

Public policy encourages the use of collective bargaining in the employment relationship. The preamble to the Labour Relations Act states:

> It is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.

Value judgements, of course, play a large part in the assessment of whether it is in the public interest to replace an unregulated market mechanism with a collective bargaining procedure for either the employment relationship or the rental relationship. A useful approach to assessing the impact of a policy such as collective bargaining is to evaluate its impact on both equity and efficiency.

Equity

In terms of equity, a widely held view is that in an unregulated labour market employees typically have less bargaining power (in some vaguely defined sense) and average lower incomes than employers. The view that employees have less bargaining power perhaps reflects the fact that one employer usually employs many employees so that any one of them is usually not of critical importance to the enterprise. Similarly, landlords are often perceived as having greater bargaining power and average higher incomes than tenants. Such views lead to arguments that equity could be increased by government intervention to increase the incomes of both employees and tenants relative to what they would be in unregulated markets.

Efficiency in Conventional Economic Analysis

Although such arguments concerning the equity of policies are an important, perhaps dominant, component of political decision-making, economists tend to de-emphasize them because they are intimately concerned with value judgements that are inherently nonscientific. Rather, efficiency is the normal basis of economic discussion of government intervention in either the rental or the labour market.

A fundamental theorem of neoclassical economics demonstrates that if all markets are perfectly competitive (and some other technical conditions are satisfied), the outcome is "efficient" in the sense that no re-allocation of resources could make one person better off without making someone else worse off. Essentially, the argument is that under conditions of perfect competition all mutually beneficial exchanges have already taken place; hence there is no scope for further changes that would increase the well-being of all parties affected.

The theory also recognizes that even if all markets are competitive, efficiency is not achieved if economic decisions affect third parties, external to the transaction, who have no market mechanism to convey their concerns to the decision-makers. A classic example is the case of air pollution. Since the air is not owned by anyone, there is no market mechanism by which third parties' preference for clean air is transmitted to the polluting party. Correcting

this "externality" requires collective action -- regulation of the pollution to reflect social concerns or the imposition on polluters of fines that reflect the value of clean air to the third parties.

Similar problems with achieving efficiency arise in cases of a public good, such as national defence, in which the provision of goods or services by one individual benefits all other individuals in the society. A free market results in the purchase of less than the optimal amount of defence services because each individual ignores the benefits his or her purchase has for others. Thus, in cases of public goods, as in those of externalities, conventional economic analysis recognizes that a competitive market does not result in efficiency; hence collective action is required to attain it.

Conventional economic analysis also notes that intervention in the market may be required to increase efficiency in situations in which employers or landlords have some degree of monopoly power -- that is, in which the market is not perfectly competitive. Many analyses of the employment and rental markets, however, implicitly or explicitly assume a competitive model. The basis for this assumption is that employment markets in urban environments are characterized by large numbers of employers and rental markets by large numbers of landlords. Although monopoly power may exist in particular occupations or particular

subsets of the rental market, these markets are often analyzed as though they are generally competitive markets.

If one views labour markets as competitive, a logical conclusion may be that bargaining for employees reduces efficiency by allowing wages for unionized labour to be raised above competitive levels; the result is that unionized industries have higher costs and lower output than would be the case under competition. Strikes and restrictive work practices are regarded as further increasing costs and reducing output. Analysts who assume that rental markets are competitive tend to regard government intervention in the form of rent controls as contributing to inefficiency for similar reasons.

Analysis Based on "Exit" and "Voice"

The conventional view of unions as contributing to inefficiency has been challenged recently in a series of papers by Richard Freeman and James Medoff of Harvard University. Their analysis uses Hirschman's (1970) distinction between "exit" and "voice" as alternative modes of adjustment. Exit refers to the market mechanism of taking one's business elsewhere if one is dissatisfied; voice refers to the use of direct communications to influence behaviour.

Freeman and Medoff argue that the employment situation embodies elements of public goods and externalities that, in

the absence of collective action, may result in a less-than-optimal use of voice:

> "Externalities" (things done by one individual or firm that also affect the well-being of another, but for which the individual or firm is not compensated or penalized) and "public goods" at the workplace require collective decision making. Without a collective organization, the incentive for the individual to take into account the effects of his or her actions on others, or express his or her preferences, or invest time or money in changing conditions, is likely to be too small to spur action. (Freeman and Medoff 1979, 72)

To restate the argument, an employee who expends the time and effort to persuade management to improve wages or working conditions normally generates effects that spill over to benefit other employees. Yet since no market mechanism exists to induce an employee to take account of these externalities, the normal market results in a less-than-optimal use of such direct communication (voice) and a greater-than-optimal tendency for employees to improve their wages or working conditions through the alternative method of exit -- that is, by quitting and finding jobs elsewhere.

Similarly, a tenant who takes action to persuade the landlord to improve building maintenance, change house rules, or modify rent increases has no economic incentive to

take account of the benefits that may accrue to other tenants as a result of this action. Thus, the market may result in a less-than-optimal degree of direct landlord-tenant communication and a greater-than-optimal degree of turnover among tenants.

For many products, it is very simple to express preferences by change (exit); for example, one can easily switch from one brand of breakfast cereal to another. But in both the employment relationship and the rental relationship, participants' use of the market mechanism of "voting with their feet" may be very time-consuming and costly. For this reason, the inefficiency resulting from the less-than-optimal use of voice may be particularly significant in these markets. Interestingly, surveys in both markets reveal levels of turnover that are surprisingly high (for example, 50 per cent per annum).

Notice, too, that the argument concerning externalities applies even if these markets are perfectly competitive. If the benefits of eliminating the externalities exceed any inefficiencies caused by setting a wage or a rent different from the competitive level, net efficiency increases. The presence of any monopoly elements in the market provides an additional reason for using intervention to improve efficiency.

For the employment market, Freeman and Medoff and their associates in the "Harvard School" buttress their

theoretical arguments with a substantial amount of empirical evidence concerning the positive effects of unions on productivity and efficiency. Although their results are still controversial (see Addison 1983 for a critical review), they are having a substantial influence in the literature. Freeman and Medoff's evidence (1979, 79) suggests that although unions do raise wages, they also reduce quit rates and extend average job tenure at any given wage rate; their data suggests job tenure is increased by 15 to 38 per cent. As a result of this effect on turnover and of improved communications between employers and employees, unionization in manufacturing increases productivity by about 20 to 25 per cent, the authors estimate, controlling for capital per worker, the skill level of workers, and other factors.

Collective bargaining for tenants would provide a voice mechanism that could reduce tenant-turnover rates, vandalism, and rent delinquency and result in lower maintenance costs for landlords. It is not clear what the magnitude of these effects would be, but the empirical evidence of the impact of collective bargaining on the productivity of employees may be suggestive of its potential impact on the rental situation. To the extent that the results from the employment market are applicable to the rental market, there are both theoretical and empirical reasons to believe that collective bargaining for tenants could bring about more

efficient outcomes than reliance on an unregulated market. (One must also consider the long-run impact on investment in rental housing. A comparison of collective bargaining and direct rent controls in this regard is a topic that requires further study.)

CERTIFICATION OF BARGAINING UNITS FOR TENANTS

Tenant associations already exist and, as already indicated, establishing a mechanism for their formal recognition would be a logical extension of the functions of the Residential Tenancy Commission. The evolution of a collective bargaining system would, however, present the Commission with the fundamentally new task of resulating the process, rather than the outcome, of the interaction between landlords and tenants. To avoid confusion with the functions and structure of the present Commission, the following exposition assumes the creation of a "Rental Relations Board" to handle the certification of collective bargaining associations for tenants.

The procedure by which the Ontario Labour Relations Board certifies bargaining units has evolved over many years and, although not perfect, could serve as a useful model for the Rental Relations Board. Essentially, a union applies for certification as the exclusive bargaining agent for a

group of employees, and the Board determines whether the proposed bargaining unit is an appropriate one and whether the majority of employees in the bargaining unit wish to be represented by the union.

When the Board receives an application for certification, it sets a date for a certification hearing, notifies the union and the employer of the hearing, and requires the employer to post a notice giving the employees details of the application. It also sets a terminal date, normally eight to ten days following receipt of the application, by which time it must receive any submissions from the parties involved.

Specification of the Bargaining Unit

At the certification hearing, the employer can contest the bargaining unit the union has suggested. In cases of disagreement, the Board specifies a bargaining unit in which it feels the employees share a community of interest that will facilitate bargaining. Generally, the Board places office employees, production employees, professional employees, and part-time employees in separate bargaining units. Employees who exercise managerial functions (generally interpreted as the power to hire and fire or to promote and determine wage increases) are excluded from collective bargaining under the Labour Relations Act.

The determination of appropriate bargaining units for tenants would be more straightforward because all units in an apartment building would normally be in the same bargaining unit. A superintendent living in a building would, however, likely be excluded, as would relatives of the landlord. The Rental Relations Board would also be required to determine the appropriate community of interest for multi-building projects and for projects that include both apartment units and townhouses.

Certification

A simple certification system that might be appropriate for the rental context is the Rental Relations Board's holding an election whenever a tenant association applies for representation and the appropriate bargaining unit has been established. To prevent frivolous applications, the tenant association might be required to make a deposit that would be refunded provided it received a certain minimum (say 15 per cent) of the vote, in a manner similar to the practice used for elections for government offices. The association could also be restricted from applying for certification of the same bargaining unit more than once in some time period (say, one year).

The procedure used in the labour relations field requires unions to devote substantial time and effort to organizing drives. At the certification hearing, the union

must demonstrate that it has substantial support among the employees in the bargaining unit. The primary measure of the level of support is indicated by the percentage of employees who have applied for membership in the union and paid a membership fee of at least $1.00. If more than 55 per cent of the employees are members, the Labour Relations Board will normally certify the union without taking a representation vote -- that is, it will grant automatic certification. If fewer than 45 per cent of the employees are members, the Board will dismiss the union's application. If the membership is between 45 per cent and 55 per cent of the bargaining unit, the Board will arrange for a representation vote by secret ballot. The union will be certified if it is favoured by a majority of those who participate in the representation vote.

Before the terminal date, an employee who has previously signed a membership application but now wishes to withdraw his or her support from the union can file a "statement of desire" with the Board. (The identity of any employee who signs a statement of desire is concealed from both the union and the employer.) If the Board is satisfied that the statement of desire does not reflect employer influence, the union membership of that employee does not count towards automatic certification. The effect of a statement of desire is, however, restricted to the

prevention of automatic certification -- it can not be used to deprive the union of a representation vote. A similar system, involving membership cards and statements of desire, could be used in the rental situation.

If the union has as members 35 per cent or more of the employees in the proposed bargaining unit, it can also request a special representation vote known as a pre-hearing vote. The purpose of such a vote, whose result has the same effect as a regular representation vote, is to allow the union to obtain a vote without the delays and possible employer intimidation that can result during the normal process. The Board must still hold a hearing, at which the union must demonstrate 35-per-cent membership. The rental situation offers less scope for intimidation of the tenants by the landlord, so there would be less need for pre-hearing votes.

At the hearing, the Board also determines if the union is a legal trade union for the purpose of the Labour Relations Act. The key requirements are that the organization be free of employer influence and have been formed for purposes that include regulation of the employment relationship. (The organization need not be an "established" trade union -- it can be an independent organization comprised exclusively of employees in the bargaining unit for which it is being certified.) The Rental Relations Board would also

need to ensure that the tenant association was free of control or influence by the landlord.

If no contentious issues must be settled at a Labour Relations Board hearing, the parties may waive the hearing by signing the appropriate form. In such a case, the Board will certify the union without a hearing. The employer must also voluntarily recognize the union by signing a private agreement recognizing the union as the exclusive bargaining agent for its employees. In this case, the Labour Relations Board is not involved in the process. There is, however, a safeguard to ensure that the employer has not voluntarily recognized a union that is not supported by the employees. During the year following voluntary recognition, any employee can go to the Board and challenge the status of the union. If it is not able to show that it had the support of the majority of the employees at the time of voluntary recognition, the Board can nullify the voluntary recognition agreement and any collective agreement the union has negotiated. One can imagine similar provisions being adopted by the Rental Relations Board.

De-certification

The procedures for de-certification of a union as bargaining agent are similar to those for certification. The last two months of any collective agreement of three years or less are an "open periuod" during which the employees may submit

a termination application to the Board or a second union can apply to replace the existing union as the bargaining agent. (If the collective agreement is for longer than three years, there is an open period in the last two months of the third year and in the last two months of each subsequent year.) Employees may also seek de-certification if the union fails to give notice to bargain or fails to bargain for a collective agreement within specified periods. The Board will hold a representation vote if 45 per cent or more of the employees in the bargaining unit sign a petition requesting de-certification or membership cards indicating they support another union.

Automatic Certification and Union Growth

An analysis by Carter and Woon (1981) of certification procedures under the Ontario Labour Relations Act indicates that of 989 applications handled during 1978, 70.0 per cent ended in certification of the union, 19.1 per cent were dismissed, and 10.9 per cent were withdrawn. Table 1 clearly demonstrates the importance of the automatic certification procedure in the current system. The 70.0 per cent of applications that received certifications is composed of 60.1 per cent of applications that received automatic certification and 9.9 per cent that were certified following a normal or a pre- hearing representation vote. Only 7.0 per cent of applications were rejected on the basis of either kind of vote.

Table 1

Disposition of Union Certification Applications, Ontario, 1978

Disposition	Number	Percentage
Application withdrawn	108	10.9
Dismissal without a vote	114	11.5
Dismissal without counting the vote	5	0.5
Dismissal after a normal representation vote	34	3.4
Dismissal after a pre-hearing representation vote	36	3.6
Certification after normal representation vote	40	4.0
Certification after pre-hearing representation vote	58	5.9
Automatic certification	594	60.1
Total	989	100.0

Source: Carter and Woon (1981) and tabulations by the author.

The importance of automatic certification in Ontario contrasts with the situation in the United States. There the National Labor Relations Board requires only 30 per cent of the employees in a bargaining unit to be union members in order for the union to obtain a representation vote, but automatic certification is not possible unless more than 50 per cent have signed and the employer agrees to waive the representation vote (Fossum 1981, 127). In practice, automatic certification is seldom used in the U.S. In a recent paper analyzing differences in unions in Canada and the U.S., Meltz (1983, 14) suggests that in the explanation

of Canada's higher private-sector union-growth rate, "Perhaps the single most important factor is the provision in virtually all jurisdictions in Canada for the granting of representation rights without a vote...."

As one might expect, there is some controversy concerning why relatively open access to automatic certification promotes union growth. Employers tend to argue that it allows unions to intimidate workers into signing membership cards. Unions argue that, even though representation votes are by secret ballot, employees are often intimidated by the economic power of the employer and that union sympathizers are sometimes fired in contravention of labour legislation. Unions also point out that representation votes are often held on the employer's premises, creating psychological pressures favouring the employer.

Whatever the reason for the effect of relatively open access to automatic certification, the evidence suggests that provision for it by a Rental Relations Board would likely stimulate the growth of a system of collective bargaining between landlords and tenants.

Compulsory Payment of Dues

Once a union is certified, the Labour Relations Act imposes on it a duty of fair representation of all employees, whether they are union members or not. Some unions are able to negotiate collective agreements that include a union-shop

provision -- a requirement that all employees become union members within a specified time of their hiring. If no such requirement exists, the union ends up acting for non-members since all employees benefit from the wages and benefits it negotiates and since the Act requires it to represent non-members fairly in grievance proceedings. Consequently, an amendment to the Act, passed in 1980, requires that employees who are not members must pay the union an amount equal to union dues. This arrangement is commonly known as the compulsory Rand formula.

The compulsory payment of dues is somewhat controversial because some people argue that, on principle, an individual should not be forced to provide financial support to an organization he or she has chosen not to join. The counterargument is that since all employees are legally entitled to the benefits of the union, all should be forced to contribute to its support. An analogy, say the supporters of the Rand formula, is the obligation of all citizens to pay taxes to support a democratically elected government, even if they do not support its policies and have voted against it. The lack of such a requirement would create an obvious "free-rider" problem -- each individual would have an incentive to claim that he or she does not support the government (or the union) in order to avoid paying taxes (or union dues).

For the rental situation, legislation analogous to the Rand formula could require all tenants of a building to pay dues to an association certified as the bargaining agent even if they chose not to join it. If a system of collective bargaining for tenants is established, the issue of compulsory payment of dues will be one of the important policy questions to be addressed. In this regard, it may be useful to note that one of the prime reasons for implementation of the compulsory Rand formula in the employment field was a series of long and acrimonious labour disputes that resulted because both sides regarded the issue as a matter of principle.

Requirement to Bargain

Once the union has been certified and given notice of its desire to bargain, the parties are obligated to meet and to "bargain in good faith and make every reasonable effort to make a collective agreement" (Labour Relations Act, Section 15). This rather vague requirement is a catch-all designed to prevent obstruction of bargaining. Although it does not preclude tough bargaining, it has been used, for example, to prevent either side from simply stating a final offer or demand on a take-it-or-leave-it basis and refusing to negotiate. A similar provision would be desirable for collective bargaining between landlord and tenants.

IMPASSE-RESOLUTION PROCEDURES FOR TENANT COLLECTIVE BARGAINING

If certified tenant associations were to operate within the framework of the current Residential Tenancies Act, the tenant association would simply make representations to the Residential Tenancy Commission on the tenants' behalf. Any dispute between the landlord and the tenant association regarding the rent increase allowable above the statutory rate would be resolved by the Commission's decision.

If, however, tenant associations were permitted to bargain on rent increases of less than the statutory rate (or for rent reductions), an alternative procedure would be required for resolving disputes. Similarly, if tenant collective bargaining were implemented as an alternative to rent review rather than as a supplement to it, an appropriate dispute-resolution procedure would be required.

Conciliation (and Mediation)

Under the Labour Relations Act, the parties may engage in a strike to solve a bargaining dispute, but before they are permitted to do so, they must use the conciliation process. Either party can request conciliation any time after notice has been given to bargain. An appointed conciliation officer meets with the parties, attempts to obtain

agreement, and reports the results to the Minister of Labour within fourteen days.

If the conciliation officer is unsuccessful in obtaining an agreement, the Minister of Labour has the option of appointing a tripartite conciliation board; each of the two parties nominates a member to it, and the two nominees recommend a third person to serve as chairman. (If the parties cannot agree on a chairman, the Minister appoints one.) The Minister also has the option of appointing a mediator instead of a conciliation board, if so requested by the parties. The mediator, who is jointly selected by the parties, has the same powers and duties as a conciliation board.

If the Minister decides that a conciliation board (or mediator) is not advisable (as is usually the case), a "no-board report" is issued. The parties can engage in a legal strike or lock-out on the seventeenth day after the mailing of the no-board report. (The notice is deemed to be received two days after mailing, and a strike is prohibited for an additional fourteen-day "cooling-off" period after receipt of the notice.)

There is some controversy about the usefulness of the conciliation process in labour relations. Many participants in the bargaining process regard it simply as an annoying delay in bargaining that has very little impact on the incidence of work stoppages. On the other hand, the discussions

with a neutral third party may reduce misinformation and misperceptions that would otherwise result in unnecessary work stoppages. In addition, the time and effort required to go through the conciliation process provide the parties with a small additional incentive to settle at the direct-bargaining stage. Some recent empirical evidence comparing strike incidence in various jurisdictions (some of which require conciliation and some of which do not) suggests that the conciliation process does reduce strike incidence significantly (Gunderson, Kervin, and Reid 1984).

The theoretical arguments and empirical evidence on the conciliation process in labour relations suggest that it might also be a useful feature of a collective bargaining system for landlords and tenants.

Strikes

At present, a "rent strike" usually means the tenants' delaying the payment of rent in an effort to induce the landlord to make repairs or other concessions. Such action does not, however, correspond to a strike in the normal collective-bargaining sense. Because the tenants continue to occupy their apartments, it imposes hardship on only one of the parties. The essence of a strike in the employment situation is that management loses profits and employees lose income. It is the fact that both sides are suffering losses that cause them to make compromises and eventually to reach a settlement.

In the landlord-tenant situation, a real strike would involve the tenants' moving out of their apartments en masse and ceasing to pay rent for the duration of the strike. Although this option seems implausible at first thought, it should not be dismissed out of hand. Experience in the employment area suggests that such tenant strikes would be used infrequently, even though it is the threat of a strike that motivates bargaining. About 90 per cent of labour negotiations are concluded without a work stoppage. Even though Canada's strike rate is high by international standards, time lost from work stoppages normally amounts to less than 0.5 per cent of annual work time, a loss much smaller than that resulting from turnover, absenteeism, or recession. The percentage of output lost from strikes is even smaller than the percentage of time lost because goods-producing industries often partially or totally offset their losses by increased production before or after a strike.

Public perception of the time lost because of work stoppages tends to be greatly exaggerated for two reasons. First, the media naturally focus on long strikes, which are most newsworthy. Second, strikes sometimes impose negative effects on third parties; stoppages in public services, such as postal delivery or mass transit, are particularly likely to cause considerable inconvenience to the public.

The strike rate is lower in service industries than in goods-producing industries because the consequences of a

work stoppage are more severe in the former. Similarly, since a strike of tenants would impose substantial costs on both the landlord and the tenant, there would be a strong inducement for the two parties to reach a settlement without resorting to one. Furthermore, inconvenience to third parties or the general public would be less pronounced for a tenant strike than for strikes in many employment situations.

Replacement

In most Canadian jurisdictions, an employer is free to hire replacement workers during a strike (although the strikers must be reinstated in their jobs once the strike is concluded). The exception is Quebec, which since 1977 has prohibited the hiring of replacement workers during a work stoppage.

In the rental situation, if striking tenants left their furniture in their apartments, it would be unwise for the landlord to re-rent the units during the strike because of the possibility of damage. Requiring tenants to remove their furniture during a strike would be impracticable because of high moving costs and the physical limitation on the number of moving vans that can be accommodated at any given time. These considerations suggest that if one contemplates the possibility of tenant strikes, one must also contemplate a law, analogous to the Quebec labour law,

prohibiting landlords from renting to replacement tenants during a strike.

Arbitration

Strikes and lock-outs are regarded as unacceptable in many employment situations, generally those that provide an essential service, such as some public-sector services. The usual alternative to work stoppage in such cases is compulsory arbitration; for example, hospitals and many of their employees must settle disputes under the Hospital Labour Disputes Arbitration Act. In the rental situation also, arbitration is an obvious alternative to the use of tenant strikes.

To some extent, the Commission already acts as an arbitrator under the rent-review provisions of the Residential Tenancies Act. The emphasis on arithmetical calculations based on landlords' projected costs and possible financial loss is, however, somewhat more mechanical than the arbitration usual in an employment situation. In particular, compulsory arbitration there places great emphasis on equity and wages paid for comparable jobs elsewhere. Rental arbitrators could give more emphasis than the Commission does to rents charged for comparable apartments in other buildings. Doing so would reduce some of the inequities that can result under the current system when comparable

apartments have different historical costs and, therefore, different rents.

In the employment situation, a common problem under convention arbitration is arbitrators' tendency to "split the difference" between the employer's offer and the union's demand. This leads to the parties' taking extreme positions during bargaining in order to improve their anticipated award under arbitration. This phenomenon, known as the "chilling effect", reduces the probability of a settlement through direct bargaining and increases the probability of arbitration's being required to resolve the dispute.

To offset the chilling effect, labour-relations workers have devised a procedural modification known as final-offer arbitration. The mechanism prohibits the arbitrator from modifying either party's final position; instead he or she must select whichever position seems most reasonable. The rationale is that both parties will avoid extreme positions during the final phases of bargaining because taking one will likely result in the other party's offer being selected by the arbitrator. Theoretically, this inducement to take reasonable positions should increase the probability of settlement at the direct-bargaining stage and reduce reliance on the arbitration procedure.

Experience with final-offer arbitration is still quite limited, but it is generally regarded as an alternative superior to conventional arbitration. Arbitrators

themselves, however, tend to dislike final-offer because it forces them to choose one side or the other, rather than a compromise position.

One of the potential problems with final-offer arbitration is that it may lead to arbitrators to make inter-temporal compromises. In other words, to maintain their image as neutral third parties, they may, consciously or unconsciously, tend to equalize the number of decisions made to union and to management. If an arbitrator is used in several consecutive disputes for the same bargaining unit, this tendency could lead to the parties' taking extreme positions in order to maximize the expected value of their award. In other words, one of the parties may feel that it is its "turn" to win the arbitration and thus not be inhibited from taking an extreme position.

A problem with any arbitration, conventional or final-offer, is that it imposes a contract that the parties have not negotiated themselves. Such settlements can lead to dissatisfaction on the part of one or both of the parties that have to live with the agreement. Although strikes also can create hostilities, there is a feeling in the industrial relations community that the parties are most likely to accept a contract to which they have voluntarily agreed, even if it follows a long strike.

The Non-Stoppage Strike

Another possible dispute-resolution mechanism is the non-stoppage strike. Although this alternative was suggested several years ago in the industrial relations literature (Sosnick 1964), it has never "caught on" in the field and is not widely known. The concept of the non-stoppage strike may, however, have more relevance to collective bargaining between landlords and tenants than between employers and employees.

The non-stoppage strike is basically an attempt to simulate the economic effects of a strike without having an actual work stoppage. The essential economic effects of a strike, as already indicated, are the losses that both sides suffer during it; it is the threat or the actual occurrence of these losses that induces the parties to compromise and negotiate a settlement. Once either party declares that it is engaging in a non-stoppage strike, the employees continue to work, but they are required to donate some percentage (say, 50 per cent) of their wages to charity. The employer is also required to contribute to charity an amount equal to (or some designated proportion of) the amount contributed by the employees. The fact that both parties suffer economic losses during the non-stoppage strike provides the incentive to compromise and negotiate a settlement. The great advantage of the mechanism is that costs are not imposed on third parties since no stoppage occurs.

One might ask why the two parties would voluntarily engage in an activity that causes losses to both. The answer is the same as for a conventional strike: by doing so or threatening to do so, each side hopes to incude the other to make concessions in bargaining.

In landlord-tenant bargaining, if the two sides were not able to come to an agreement, either could declare a non-stoppage strike. Tenants would continue to occupy their apartments and pay rent, but they would also pay to charity an amount equal to some percentage of their rent. Landlords would pay an equal (or some proportionate) amount to charity. It might be desirable to have the percentages paid to charity start relatively low and rise during the duration of the non-stoppage strike to create increased pressure on both sides to settle.

The reader's first reaction may be that such a mechanism would be a much greater hardship on a low-income tenant than on a high-income landlord. One must remember, however, that if the landlord had many tenants, a relatively small absolute cost to each would result in a large absolute loss to the landlord. Moreover, public policy could affect the relative bargaining power of the two sides by changing the formula relating the landlord's contribution to the amount of the tenants'.

One could also modify the scheme by replacing contributions to charity with contributions to a fund that could be

used to administer the program, provide housing subsidies, reduce general taxes, or some other worthwhile goal.

CONCLUSIONS

It appears that the concept of collective bargaining for tenants is worth further discussion as a possible policy alternative. Because of the public-goods nature of efforts to modify rental conditions, collective action in the form of bargaining by certified tenant associations might have positive effects on efficiency that would tend to offset any negative impacts of setting rents at a level different from the competitive level. More importantly, collective bargaining for tenants could contribute to equity goals.

The present procedures for the certification of unions under the Labour Relations Act provide a useful starting point for policies to govern certification of tenant associations. One policy that might be useful is a procedure for automatic certification of tenant associations on presentation of evidence that a majority of tenants in the building belonged to the association. Another such policy is the application of the compulsory Rand formula whereby all tenants in a building, whether they were members of the tenant association or not, would be required to pay

dues to the association once it was certified as the bargaining agent.

Certified tenant associations could represent tenants either under the current Residential Tenancies Act or as an alternative to the Act. If they bargain outside the Act, a mechanism for resolving disputes would be required. A conciliation procedure, like that now used in the labour-relations field, could be a useful supplement to other dispute-resolution procedures.

In the rental situation, a strike would involve tenants' temporarily moving out of their apartments en masse. It is likely that such a strike weapon would actually be used very infrequently, but the threat of its use would provide the impetus for bargaining. The inconvenience to third parties and the general public would be considerably less than strikes in the labour market cause. It does not seem practical to allow landlords to rent apartments to replacment tenants during the course of a strike.

If the use of a strike is deemed undesirable in the rental situation, a compulsory arbitration system is a possible alternative. Final-offer arbitration appears to be preferable to conventional arbitration, however, since it avoids the chilling-effect on bargaining that characterizes the latter.

A final, innovative possibility is the use of a non-stoppage strike. If either party declared such a strike, tenants would continue to occupy their apartments and pay rent, but both landlord and tenants would be required to contribute to charity an amount equal to some fraction of the rent. Such a scheme is intended to simulate the economic effects of a strike without imposing the disruption of tenants' having to move out of their apartments.

To conclude, the cross-fertilization of ideas from disparate fields of study has in the past provided many significant intellectual innovations. It is hoped taht the modest attempt in this paper to cross disciplinary boundaries has not been too severe a violation of that tradition.

REFERENCES

Addison, John T. 1983. "The Evolving Debate on Unions and Productivity." Journal of Industrial Relations 25:286-300.

Carter, D. D., and Woon, J. W. 1981. Union Recognition in Ontario: A Study of Union Management Conflict During the Establishment of the Collective Bargaining Relationship. Ottawa: Labour Canada.

Fossum, John A. 1982. Labor Relations: Development, Structure, Process. rev. ed. Dallas: Business Publications.

Freeman, Richard B., and Medoff, James L. 1979. "The Two Faces of Unionism." The Public Interest 57:69-93.

Gunderson, Morley; Kervin, John; and Reid, Frank. 1984. "A Micro Model of Strike Incidence and Duration". Paper prepared for Labour Canada. Ottawa. (Mimeographed.)

Hirschman, A. 1970. Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States. Cambridge, Massachusetts: Harvard University Press.

Meltz, Noah M. 1983. Labour Movements in Canada and the United States: Are They Really That Different? Paper presented at the MIT/Union Conference, Boston, 19-21 June 1983. Toronto: Centre for Industrial Relations, University of Toronto.

Ontario. Labour Relations Act, Revised Statutes of Ontario 1980, chapter 228, as amended by Statutes of Ontario 1983, chapter 42.

Sosnick, Stephen H. 1964. "Non-Stoppage Strikes: A New Approach." Industrial and Labour Relations Review 18:73-80.